

AN ALERT FROM THE BDO FEDERAL TAX PRACTICE

# BDO KNOWS:

## FEDERAL TAX



### SUBJECT

## NEW PROPOSED REGULATIONS ADDRESS SIGNATURE REQUIREMENT FOR SECTION 754 ELECTION

### SUMMARY

On October 11, 2017, Treasury issued proposed regulations (REG-116256-17) (Proposed Regulations) that would remove the signature requirement associated with making a section 754 election to adjust the basis of partnership property. The Proposed Regulations would reduce regulatory burdens by eliminating partnership relief requests for unsigned section 754 elections.

### DETAILS

#### *Background*

Section 754 provides that if a partnership files an election (Section 754 Election), in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years.

Under current regulations, a Section 754 Election is made in a written statement that is included in a timely filed partnership return for the taxable year in which the distribution or transfer occurs. It must (i) set forth the name and address of the partnership making the election, (ii) be signed by any one of the partners, and (iii) contain a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and section 743(b).

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Taxpayers have two avenues of corrective relief in the event of a failure to make a timely Section 754 Election: (1) automatic relief under section 301.9100-2 if the error is discovered and corrected within 12 months from the due date of the partnership return (including extensions); or (2) through a private letter ruling request pursuant to section 301.9100-3 (collectively with 301.9100-2, "9100 Relief"). Historically, the IRS receives numerous requests for 9100 Relief with respect to inadvertently unsigned Section 754 Elections, especially where returns have been electronically filed. The proposed regulations are intended to alleviate the administrative burden associated with the filing of Section 754 Elections pursuant to existing regulations.

### ***New Rules***

In order to ease the administrative burden on partnerships seeking to make a valid Section 754 Election and to eliminate the need to seek 9100 Relief, the Proposed Regulations remove the requirement that the Section 754 Election must be signed by a partner in the partnership. Accordingly, under the Proposed Regulations, partnerships are able to make a valid Section 754 Election by filing a statement with a timely filed partnership tax return for the taxable year in which the distribution or transfer occurs that contains a) the name and address of the partnership making the Section 754 Election and b) a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and 743(b). Under the Proposed Regulations, the signature requirement has been eliminated.

### ***Effective Date***

The updated rules are proposed to apply to taxable years ending on or after the date the regulations are published as final. However, partnerships may rely on the Proposed Regulations for periods preceding the proposed applicability date. Consequently, partnerships that timely filed a partnership return containing a Section 754 Election consistent with the requirements of the Proposed Regulations will be treated as having made a valid Section 754 Election, notwithstanding the lack of a partner's signature.

## **BDO INSIGHTS**

Treasury and the IRS intend to simplify the process for making a Section 754 Election in order to decrease regulatory burdens. To this end, the Proposed Regulations would remove the signature requirement in making a valid Section 754 Election. As a result of the effective date provided for in the Proposed Regulations, taxpayers who have previously filed an unsigned Section 754 Election that is consistent with the requirements of the Proposed Regulations may not need to seek 9100 Relief.

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